

August 15, 2006



TRANSCRIPT
August 15, 2006

MONTGOMERY COUNTY COUNCIL

PRESENT

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman
	Michael Subin



August 15, 2006

1 [MUSIC]

2
3 Council President Leventhal,

4 Good afternoon, County Council is in session. We have only a few items before us this
5 afternoon. We first have a resolution to amend previously adopted Resolution 15-1556
6 regarding a proposed amendment to the County Charter and Resolution 15-1557,
7 Qualification for Ballot of Petition Amendment to the County Charter. We understand
8 that there are several irregularities in the petitions, that is in the language of the
9 question submitted to us by Mr. Ficker. He does have a sufficient number of signatures
10 to be qualified for the ballot, but we should have a discussion about the legal sufficiency
11 of the petitions, as well as about the proposed Charter Amendment language. Mr.
12 Faden, can you walk us through the questions before the Council?

13
14 Mike Faden,

15 Yes, Mr. President. First, very briefly, Mr. Ficker submitted this petition with above the
16 10,000 required signatures a week ago. The County Board of Elections staff is verifying
17 the signatures, hasn't completed that yet. Has told us they don't expect to complete it
18 before next week. So at this point we don't know if the petition is actually qualified.
19 Therefore the language in the resolutions before you is conditional based on the petition
20 qualifying. Which means the County Board of Elections both certifying it has the needed
21 number of signatures and that it is otherwise is qualified for the ballot which they have a
22 judgment call on the same as the Council does. Secondly, just today the County
23 Attorney's office, Marc Hansen, sent to us a memo that his, he had written back in 1992
24 regarding a very similar Charter Amendment, again, proposed by Mr. Ficker raising a
25 number of interpretation and consistency issues regarding how the, that amendment fit
26 in with County and State, particularly State Income Tax Laws. The same issues and
27 probably a little more would pertain to this amendment. Mr. Hansen's conclusion was
28 because of the irregularities the amendment shouldn't be certified for the ballot. In 1994
29 the Council received similar advice and didn't accept it, they certified a similar
30 amendment for the ballot. Our advice this year is the same. This amendment, even
31 though it will have a number of issues that if it is approved by the voters the courts will
32 have to interpret and deal with, it is a proper subject for the ballot, i.e. Property tax relief,
33 was submitted with at least ostensibly the required number of signatures. It's not clearly
34 inconsistent with any provision of state law, and therefore although we share the County
35 Attorney's offices doubts about the provisions themselves, we believe that on balance
36 our advice would be A. that the Council could certify this petition for the ballot.

37
38 Council President Leventhal,

39 Mr. Hansen, would you walk us through the issues that you see with the language
40 submitted by Mr. Ficker?

41
42 Marc Hansen,

43 Sorry, don't use that very often. Let me concentrate on the two major issues as I see
44 them with respect to this petition. The petition begins by indicating to the folks who were



August 15, 2006

1 asked to sign it, that its intent was to require the Council with increasing the piggyback
2 income tax above 50% to decrease the total County property tax revenues by an
3 equivalent amount. In my mind that basically is telling the petition signers this is a
4 revenue neutral measure, or its intent is to be revenue neutral. In other words you raise
5 the income tax this amount, you have to raise, lower the property tax that amount, so
6 you end up with an equivalent amount of total revenue. But the formula that follows that
7 declaration of intent does not accomplish that intent, in my view. When you look at the
8 way the formula is set out it says you take, you begin with prior years' property tax
9 collections, you increase that by the CPI and you increase that by certain growth
10 factors, and then you subtract from that amount the amount, the delta, the difference
11 between the 50% and what we actually collect. Relatively minor manner. He doesn't
12 define in the petition what the prior years' income tax was. But the end result is, let's
13 take an example, let's say we start with, for purposes of, just example for purposes only,
14 we collect \$100 in property tax last fiscal year. You have a CPI of 10%. So that's \$10.
15 And then you have growth factors which account for \$15. Get to collect \$115 in property
16 tax, and then you have to subtract from that amount the difference in the income tax
17 between 50% and 60%. Let's say that's 20. So you take 20 from 115 and come up with
18 95. So that's what you can collect. \$95 in property tax. Next year you end up with,
19 starting with your base, if you continue to increase the Piggyback Tax, you know, above
20 the 50% level, your base is going to be 95. You add the 10% CPI, which is \$9.50, not
21 \$10 anymore, and then you add the growth factors, let's keep that the same at five, so
22 you end up with \$14.50, \$114.50 I guess. And then you subtract that same 20. The
23 property tax keeps on going down. And, if, I mean, I don't know, the Council would have
24 to make a decision about whether in the long term it was in the interest of ever
25 increasing the piggyback above 50%, because you end up eroding the total amount of
26 money you can collect. So, in my view, the petition really was not -- the declaration of its
27 intent was not accurate in terms of what the actual effect of what the formula was. In my
28 view that's a significant flaw in the petition. I think there's another issue here, and that its
29 intent, or effect, I don't know what the actual intent in Mr. Ficker's mind was, the actual
30 intent seems to be to take away from the Council the authority given to it by the General
31 Assembly to increase the Piggyback Tax above 50%. From that perspective it conflicts
32 with the general state law, and also in my view is defective for that reason. Those are
33 the two major reasons or problems I have with this petition. There are some other minor
34 ones as well as including the fact that Mr. Ficker seems to have continued to use an
35 outdated Charter when he drafts these petitions, and he proposes to substitute this
36 proposed amendment, as a new paragraph two in the Charter. That will then leave in
37 place two property tax, if we do it, follow his directions literally, two property tax limits.
38 The one we currently have and then this new one. Then we're faced with the issue of
39 which one controls, well, probably the latter enacted but you end up with a lot of
40 confusion.

41
42 Council President Leventhal,
43 Ms. Floreen.
44



August 15, 2006

1 Councilmember Floreen,
2 Thank you, Mr. President. Mr. Hansen, is there a Statement of Justification for the
3 Charter Amendment that has been circulated to garner the signatures, where the intent
4 is clear?

5
6 Marc Hansen,
7 The, I'm only aware of what was in the proposed amendment which was given to voters
8 to sign, which includes, as I understand it, this leading or introductory paragraph of the
9 intent and then sets out the actual language.

10
11 Councilmember Floreen,
12 Where is that? Do we have that language?

13
14 Mike Faden,
15 You have it quoted on the first page of the action memo in the fourth paragraph that
16 starts "according to Mr. Ficker."

17
18 Councilmember Floreen,
19 Okay, that was what was circulated to the public to solicit their support.

20
21 Mike Faden,
22 Yes, plus the actual language.

23
24 Marc Hansen,
25 Plus the actual language.

26
27 Councilmember Floreen,
28 Then the actual language. Are you saying, Mr. Hansen, that the information given to
29 folks, in order to encourage them to sign the petition, is not consistent with the actual
30 language that is proposed to amend the Charter?

31
32 Marc Hansen,
33 In my opinion it is not.

34
35 Councilmember Floreen,
36 In other words, are you saying there's been false advertising about what this would
37 achieve?

38
39 Marc Hansen,
40 Well, I don't know if it was intentional or not...

41
42 Councilmember Floreen,
43 Well...



August 15, 2006

1 Marc Hansen,
2 But I think it's misleading.

3
4 Councilmember Floreen,
5 Inaccurate?

6
7 Marc Hansen,
8 Yes, in actuality I believe it's misleading.

9
10 Councilmember Floreen,
11 Okay, thank you.

12
13 Council President Leventhal,
14 Mr. Subin.

15
16 Councilmember Subin,
17 The state law permits us to go to 60%, correct?

18
19 Mike Faden,
20 The state law used to do that. The state law has changed totally in that respect. It now
21 allows us to go, to translate out 3.2% of taxpayers' gross income. So it is not a
22 Piggyback Tax anymore. So the 50%, 60% language is obsolete.

23
24 Councilmember Subin,
25 Okay. What was it, two years ago?

26
27 Mike Faden,
28 Around 1999, I think.

29
30 Councilmember Subin,
31 So then, the 50% isn't even applicable.

32
33 Mike Faden,
34 It's not directly applicable. It certainly doesn't fit the current structure. It could be
35 interpreted, and this is stretching somewhat, to, say, 50% -- well, a court would interpret
36 it some way and probably they would...

37
38 [LAUGHTER]

39
40 Mike Faden,
41 ...all right. My guess is that they would say 50% of the income tax yield, but that is just
42 one guess.

43
44 Councilmember Subin,



August 15, 2006

1 How could they say, I don't understand how you get to even conjecturing that.

2
3 Mike Faden,

4 Well if you look at the actual text which shows up on circle six and seven of this packet,
5 the key phrase there, and we know it was meant in a whole different context, but if it
6 were approved by the voters it would be interpreted in current context it says, "minus
7 the previous year's County Income Tax revenues in excess of the 50% level of state
8 income tax."

9
10 Councilmember Subin,
11 That doesn't make sense.

12
13 Mike Faden,
14 We agree.

15
16 [LAUGHTER]

17
18 Councilmember Subin,
19 Let me change the question, Okay, so the 50% is not applicable. But even at that 3.2%,
20 we're still already at about the max.

21
22 Mike Faden,
23 We are at the max.

24
25 Councilmember Subin,
26 Okay. So, how does -- this says "when increasing the County piggyback income tax."
27 Does that mean if you're already above whatever that, let's just say, whatever that
28 amount is rather than the 50% or the 3.2%, let's just for the sake of argument imagine,
29 well, we are, we're at the top of wherever we can be. And this says "when increasing."
30 So you can't increase above the maximum the state has allowed you to. So even if this
31 passes, it's moot.

32
33 Mike Faden,
34 That is one possible...

35
36 Councilmember Subin,
37 The way it's worded it's a moot point.

38
39 Mike Faden,
40 That is one possible interpretation that may not be...

41
42 Councilmember Subin,
43 Well, that's my interpretation. So, Okay, let me change the question then. If I'm
44 interpreting this as saying that "when increasing" means when the Council takes a



August 15, 2006

1 future action to go above whatever the maximum is, it will have to then decrease the
2 property tax.

3
4 Mike Faden,

5 That is the general thrust of this. Bear in mind that the...

6
7 Councilmember Subin,

8 If it's the general thrust, however you interpret it, that's the general thrust then it's moot.

9
10 Mike Faden,

11 There's two ways to interpret the language. First, bear in mind that language is in the
12 petitioner's intent statement. It's not in the actual text of the amendment. The two ways
13 to interpret it, one of them is the way you suggested which would lead to the
14 amendment, could lead to the amendment being a nullity. The other way is to interpret it
15 as meaning if the income tax rate is increased in the future or has already been
16 increased in the past above a certain level. Which has been the case.

17
18 Councilmember Subin,

19 Yeah, but, in either one of those interpretations, with the first interpretation it is already a
20 nullity. The second interpretation assumes that the state would allow the localities to go
21 beyond where they are now, and that localities would then take advantage of it. So, it is,
22 it is a speculative addition or amendment to the Charter.

23
24 Mike Faden,

25 Again, depending on precisely how this language is interpreted.

26
27 Councilmember Subin,

28 If you're interpreting it, if you're interpreting when "when increasing" the way I am, as a
29 future action, and given that we are at the maximum, it would take a number of dominos
30 to fall for this provision to take effect.

31
32 Mike Faden,

33 And that, the question you raised goes to whether the language on the petition as
34 opposed to the language in the amendment was misleading

35 Councilmember Subin,

36 Okay, well for the record, I'm misled.

37
38 Council President Leventhal,

39 Okay, I have a different line of questions, and that is this, on Circle one, at the beginning
40 of the resolution we adopted earlier it says the following: "Section five of article 11-A of
41 the Constitution provides that amendments to the Charter may be proposed by a
42 petition signed by at least 10,000 registered voters of the County and filed with the
43 President of the County Council." My question gets to what is our obligation now? If
44 10,000 residents of Montgomery County duly certified signed the petition that stated that



August 15, 2006

1 every elected -- that the Charter should be amended such that every elected official
2 must speak fluent Serbo Croatian, regardless of whether it were practical to find nine
3 Councilmembers plus a County Executive who spoke fluent Serbo Croatian, that that
4 matter would end up in the Charter if the voters voted for it. And it, would it be the
5 Council's job to determine whether something is practical, or is it only the Council's job
6 to determine whether a petition has been duly presented to us, and signed by the
7 correct number of voters regardless of whether it can work in its practical application?
8

9 Mike Faden,

10 Inarguably the answer is, a bit in the middle. We think your goal is not to decide whether
11 it's practical but to decide whether it legally qualifies for the ballot. The example you just
12 gave is a qualification for the office so that unless, that would make it proper Charter
13 material. Now if you could argue in that case a court would say that was so totally
14 arbitrary that it would never pass muster under any version of state law, that might be a
15 winning argument and you could, for that reason probably you could be supported in
16 denying, rejecting that kind of petition for the ballot. What we're saying is that this is not
17 a policy argument, it's much more of a legal question.
18

19 Council President Leventhal,

20 It's definitely a legal question. I'm trying to get to the law because I don't have the
21 constitution in front of me, I only have circle one that say amendments to the Charter
22 may be proposed by a petition signed by at least 10,000 voters and filed with the
23 President. The question is how much discretion does the County Council have? I'm the
24 first to say, and I know my colleagues will say over the next few months, I have never
25 supported any of the petitions as a voter that Mr. Ficker has submitted to the public, and
26 I don't support this one. And I hope voters will reject it. But do we as County Council
27 have the discretion to say to 10,000 registered voters who signed the petition, inept as it
28 may be, no, we will not put it on the ballot? Do we have that discretion?
29

30 Mike Faden,

31 You have a limited discretion. Let me give you a couple of examples which might
32 illuminate this. If you received a petition now, to, as the Council did a few years ago to
33 put a restriction on speed bumps in the Charter, you could say, no, that, under the case
34 law interpreting Maryland, the Maryland Constitution, that is not proper material for a
35 County Charter. That in fact is what the Court of Appeals held when it reviewed that
36 same petition.
37

38 Council President Leventhal,

39 But I, I don't know the history on that, so that's relevant, just go over that. You're saying
40 that a speed bump Charter Amendment was petitioned? 10,000 voters sign it and the
41 County Council rejected it?
42

43 Mike Faden,



August 15, 2006

1 No, the Council, at that point the state law was different. The Council had a more limited
2 review authority. The Council put the ballot language on the ballot. Some voters who
3 opposed the petition took it to court, the matter went to the Maryland Court of Appeals.
4 They said this is clearly legislating through the Charter, it's not proper Charter material,
5 it's not proper subject for the Charter. If you received something that was clearly not a
6 proper subject for the Charter you could certainly reject it under this language that you
7 cited. Similarly...

8
9 Council President Leventhal,
10 I'm not understanding the connection there. You're saying the Court of Appeals rejected
11 it. You're not saying that the Court of Appeals told the County Council that the County
12 Council could have rejected it. We've got checks and balances.

13
14 Mike Faden,
15 The -- I think those -- I think that amounts to the same thing given the timing.

16
17 Council President Leventhal,
18 I don't think it amounts to the same thing at all. If our role is simply to say, hey, a petition
19 was circulated, regardless of what it says, again, I don't, shouldn't single out my Serbo
20 Croatian constituents, something ridiculous that everybody has to only eat peanut butter
21 and jelly sandwiches in Montgomery County. Ridiculous as it may be, if 10,000 people
22 have signed it, is it not the County Council's role simply to place it on the ballot? Or do
23 we have the discretion to say it's illegal, out of compliance with State law, what is the
24 amount of our discretion?

25
26 Mike Faden,
27 The last two of those. I don't think you have the discretion to say it's ridiculous but you
28 have the discretion, I wouldn't call it discretion, you have the authority and probably the
29 duty, if it does not comply with state law, if it's not proper subject, if it's not proper
30 Charter material is the phrase used in the Maryland cases, then you have the authority
31 at least, I think, the duty, to reject it.

32
33 Council President Leventhal,
34 And you're saying we have that authority because the Court of Appeals struck down
35 something from the ballot?

36
37 Mike Faden,
38 No, you have that authority because of provisions in the State Election Law giving you
39 that authority. The Court of Appeals just said that particular provision was not proper
40 subject matter for a Charter and in doing so they in effect said a Council can reject.

41
42 Council President Leventhal,
43 Do we have the provisions of State Election law here today?



August 15, 2006

1 Mike Faden,
2 Yes.

3
4 Marc Hansen,
5 It's 7-102 of the State Election Code, which says that a question relating to the
6 amendment of a County Charter shall qualify, either upon the passage by the governing
7 body of a resolution proposing the amendment, which didn't happen here, or a
8 determination by the governing body of the County that a petition submitted has
9 satisfied all the requirements established by law relating to petitions initiating Charter
10 Amendments.

11
12 Mike Faden,
13 So, the example of the speed bumps is where something, because of its nature,
14 because of its subject matter, clearly doesn't qualify for the charter. It's not proper
15 Charter material. Another example, if say you received a petition to require the County
16 income tax rate to be raised to 6% and the funds for that be used to reduce the property
17 tax rate, that would not qualify because it's directly contrary to state law which says that
18 the maximum income tax, County income tax rate could be 3.2%.

19
20 Council President Leventhal,
21 Is it not directly contradictory to state law, since there is no 50% Piggyback Tax?

22
23 Mike Faden,
24 This is arguably -- the petition before you now is arguably contrary to state law. Mr.
25 Hansen makes a very decent argument that it is contrary. We don't think it's so clear cut
26 that you should flatly reject it. Somebody, if they believe it's contrary to state law, any
27 voter could take that to court. We think in this case it's enough in the gray area, this
28 petition has so many interpretive issues, but it is, the basic subject of it, property tax
29 relief clearly qualifies for the ballot. So we think, in this kind of case, our advice is, the
30 law isn't crystal clear, therefore, you give the benefit of the doubt to the voters who
31 signed the petition.

32
33 Council President Leventhal,
34 I am going to call on Councilmembers who haven't yet had questions, and then
35 Councilmembers with a Second round of questions will get their chance. Mr. Andrews
36 followed by Mr. Perez.

37
38 Councilmember Andrews,
39 Thank you, Mr. President. I certainly agree with my friend that the subject is appropriate
40 for a Charter Amendment but it seems to me the clear language of the intent is different
41 from the text. The language that's according to the intent is prospective. "when
42 increasing", not referring to what may have been done in the past. Whereas the
43 language in the actual text applies to receiving, not increasing. So, the difference is that,
44 the intent, one would interpret the intent language as applying when the Council takes



August 15, 2006

1 an action to raise the income tax then it must decrease property tax revenues by an
2 equivalent amount. But according to the text, any time in the future of the Council took
3 in more than half of the state income tax rate revenues. Then, the Council would have
4 to decrease the property tax revenues by an equivalent amount. That's very different.

5
6 Council President Leventhal,
7 Yeah.

8
9 Councilmember Andrews,
10 And I think that is a clear substantive difference.

11
12 Mike Faden,
13 It is, it is potentially, I would not use the word "clear" for anything in here but it's a very
14 important substantive difference. In case of the substantive difference the courts would
15 rely on the actual language of the amendment and not this intent statement. But, the
16 question is, as Ms. Floreen brought out earlier, whether the intent statement itself is so
17 misleading that the petition should not be certified.

18
19 Councilmember Andrews,
20 It is misleading. It's different than what the effect would be. The effect would be
21 retroactive. The intent says it's prospective.

22
23 Mike Faden,
24 I think the intent could be read retroactively or prospectively. It's very unclear. To give it
25 a little benefit of the doubt, I think it could mean if the Council has increased, along with
26 if the Council does increase in the future.

27
28 Council President Leventhal,
29 Mr. Perez, do you have a question?

30
31 Councilmember Perez,
32 If I understand correctly, the Council can refuse to certify a petition if it doesn't comply
33 with applicable law?

34
35 Mike Faden,
36 That's correct.

37
38 Councilmember Perez,
39 I'm looking at both Marc and Mike, what applicable law do you believe this does not
40 comply with?

41
42 Marc Hansen,



August 15, 2006

1 In my view it doesn't comply with the standards the Court of Appeals has set out with
2 respect to whether a petition has adequately informed the prospective signers of the, of
3 what the amendment is about.

4
5 Councilmember Perez,
6 Mike?

7
8 Marc Hansen,
9 Let me say that there is, I mean, the Court of Appeals is not directly faced has not
10 directly faced an exact issue like this. It's faced similar issues where they've found
11 questions and petitions misleading, but they have not actually dealt with an issue where
12 the intent statement is at odds with the actual effect of the amendment that is being
13 proposed.

14
15 Councilmember Perez,
16 Did you want to...

17
18 Mike Faden,
19 I think Marc's statement of the law is totally on point. What, just to add to that, what the
20 court would have to do in this case was first figure out what the intent statement meant.
21 Then figure out what the actual amendment meant. Look to see if the differences were
22 so substantial that the voters were misled. And given that the voters, the general thrust
23 of this, is that the, a voter would sign it, not so much because they care about the
24 precise mechanism of getting property tax relief, as that they would get property tax
25 relief. I think it would be a very close question. I think a court would, faced with that in a
26 pre-election case would be more inclined to leave it on the ballot. But that's a very
27 difficult prediction.

28
29 Councilmember Perez,
30 I assume if it were refused to, if we refused to certify it it's obviously up to Mr. Ficker to
31 determine what to do next.

32
33 Mike Faden,
34 Correct, by the same token, if you do certify it, any voter...

35
36 Councilmember Perez,
37 Yeah, absolutely.

38
39 Mike Faden,
40 Right.

41
42 Councilmember Perez,
43 Thank you Mr. President.



August 15, 2006

1 Council President Leventhal,
2 I just want to be clear with Marc Hansen and I will call on Ms. Floreen and Mr. Subin
3 next. You're stating this is out of compliance with state law because the description of its
4 effect that was presented to the signers does not accurately describe the language that
5 would be added to the Charter. Not the separate issue which Mr. Subin and I were
6 getting at before, which is there is no Piggyback Tax any longer, it's not constituted the
7 way it was before, and so therefore this formula that Mr. Ficker's Charter Amendment
8 would propose to use to calculate the reduction in property tax, can't in fact be applied
9 under state law. Am I right?

10
11 Marc Hansen,
12 I made the first point, not the second point. The second point I made was that when you
13 put the actual formula into effect, that the practical consequence is to take away from
14 the Council the authority the General Assembly gave it, which was to increase the
15 income tax to the effect of 60% level. I believe that's another substantive reason why
16 this is a flawed amendment.

17
18 Council President Leventhal,
19 That is another way in which this is out of compliance with applicable law?

20
21 Marc Hansen,
22 In my view, yes.

23
24 Council President Leventhal,
25 And state election law does give Council the discretion to reject your belief a proposed
26 Charter Amendment that is out of compliance with state law.

27
28 Marc Hansen,
29 That's correct. Doesn't meet requirements established by state law.

30
31 Councilmember Perez,
32 What about the point you just raised?

33
34 Council President Leventhal,
35 The point that you can't apply this formula this formula that the Charter Amendment is, if
36 adopted would require us to apply can't be applied. It doesn't exist. There's no
37 Piggyback Tax of 50%.

38
39 Marc Hansen,
40 On that argument. I agree. That is an argument for rejecting it. In any view, I think
41 Mike's point is the better one. I think the way the actual amendment is read, it says
42 minus the previous year's County tax revenues in excess of the 50% level. So that could
43 be read as a continuing test, that every year, of course it doesn't say what year, I
44 assume it means the previous calendar year for which taxes were collected.



August 15, 2006

1
2 Mike Faden,
3 We think so but that is not sure.

4
5 Marc Hansen,
6 That's unclear. Because property taxes are collected on a fiscal year basis, income
7 taxes on a calendar year basis. But, if it was over 50% of the state income tax you
8 would have to subtract the difference.

9
10 Council President Leventhal,
11 Ms. Floreen.

12
13 Councilmember Floreen,
14 Thank you, Mr. President. Mr. Faden, is it clear to you, using the words in front of us
15 provided to us by Mr. Ficker, is it absolutely clear to you what this means?

16
17 Mike Faden,
18 No. Far from it.

19
20 Councilmember Floreen,
21 So, we don't know, this doesn't use current terminology.

22
23 Mike Faden,
24 That's correct.

25
26 Councilmember Floreen,
27 It attempts to amend a portion of the Charter, the wrong portion of the Charter...

28
29 Mike Faden,
30 No, we think...

31
32 Councilmember Floreen,
33 You think but it's not...

34
35 Mike Faden,
36 No, I'm amending the second paragraph versus the fourth paragraph. If that were the
37 only issue raised I wouldn't think a judge would knock it off the ballot because of that.
38 It's clear what language he wants to amend.

39
40 Councilmember Floreen,
41 The fact of the matter is you cannot tell us what this means with any certainty?

42
43 Mike Faden,
44 That's true.



August 15, 2006

1
2 Councilmember Floreen,
3 I'm going to move that we reject this.

4
5 Council President Leventhal,
6 The motion has been made by Ms. Floreen and seconded by Mr. Knapp that this
7 proposed Charter Amendment be rejected. Mr. Subin.

8
9 Councilmember Subin,
10 Marc didn't use the word "pre-emption" but sounds like...

11
12 Marc Hansen,
13 Correct, pre-emption by conflict is my second point.

14
15 Councilmember Subin,
16 I'm going to vote for the amendment but I want to, I don't think we're pre-empted from
17 this. The state, and I don't have the state law in front of me, but I think the state law
18 says, assuming for the sake of my question, that the 50% was right, that you can go up
19 to, what used to say you can go up to 60%, but that didn't mean that a local jurisdiction
20 had to, and I don't remember anything in there from the state law that said that a local
21 jurisdiction could not use a lower number.

22
23 Mike Faden,
24 That's correct.

25
26 Councilmember Subin,
27 The local jurisdiction could completely obliterate...

28
29 Mike Faden,
30 There may be a minimum in the older terms, 20%...

31
32 Councilmember Subin,
33 Was there an amendment, Okay. Go down to the minimum...

34
35 Mike Faden,
36 Above the minimum.

37
38 Councilmember Subin,
39 So, I don't know that, if this were clear, that we would be pre-empted from doing it. One
40 of the reasons I'm going to vote for this, is that, I think we have an obligation to ensure
41 that the Charter is as clear as possible. You're never going to have a document that is
42 not open to some interpretation. But when we're sitting here, and on the record, trying to
43 guess at what this means, I think we have an obligation to the public to keep it off the
44 ballot, rather than sitting here and inviting an electoral process followed by what will be,



August 15, 2006

1 could be, years of judicial wrangling on just what, what does it mean. And I think that
2 obligation alone should knock this out of the box and the fact there are two, you look at
3 one piece of this it says one thing. Look at another piece it says another. Then you look
4 at that 50%, and you may be able to say, Okay, we can figure out what that 50% means
5 in terms of a number. Now we have to go back to Tim and Rob and say, Okay, now
6 translate that back to reality. This just doesn't pass the test of reality.

7
8 Council President Leventhal,
9 Mr. Denis.

10
11 Councilmember Denis,
12 Thank you, Mr. President. I want to thank Robin Ficker for bringing us together again. A
13 rite of passage every couple of years I guess. What we have before us is yet another
14 bizarre mixed up, messed up Ficker amendment. And, if this were to qualify for the
15 ballot clearly there would be a need for a massive public education effort to explain what
16 the different alternatives might be. Where, we're not psychologists, we're not judges, it's
17 difficult to determine what the intent was or may have been but I guess I'm in that
18 category that was referred to before. I never voted for either Robin Ficker or any one of
19 his amendments and I don't intend to start now. If this somehow gains the requisite
20 number of signatures and then the question arises as to whether or not it's appropriate
21 for the ballot, I think that would have to be determined elsewhere. Let those who think
22 that this is a fit subject petition the courts. I personally do not think that, with what we
23 have before us, that it's appropriate. For a ballot question. So I will support the
24 amendment, the motion.

25
26 Council President Leventhal,
27 Mr. Andrews?

28
29 Councilmember Andrews,
30 Thank you, well, I think that the reason why the Council should reject this proposed
31 amendment is because the language that was described in the intent is different from
32 the effect. The intent language says to require that the "County Council when increasing
33 Piggyback Income tax revenues by 50%, the state income tax decrease total
34 [INAUDIBLE] while still allowing budget growth for inflation and growth factors." That is
35 different from the text of the language which says "if the Council receives income tax
36 revenues above half of where the state is." that is a different situation. So the intent as
37 described to voters is misleading. And that's why it's legally insufficient.

38
39 Council President Leventhal,
40 Well, I find this not an easy choice because there is part of me that thinks that, if 10,000
41 voters legitimately signed something, it doesn't really matter what that language is, that
42 we have some obligation to put it on the ballot and let the majority of the wise voters of
43 Montgomery County accept or reject it. On the other hand, I do, I have listened carefully
44 to the description of what discretion state election law gives us. It does sound to me, in



August 15, 2006

1 several respects, all of these respects, Mr. Andrews mentioned the lack of connection
2 between how it's described and the effect it would have, the question as to whether or
3 not there's a Piggyback Tax and if it could be applied if it were added to the Charter, it
4 does seem to me persuasive this is out of compliance with state law. And that therefore
5 we do have the discretion to keep it off the ballot. So I will so vote. So, this matter now
6 comes to a vote. Those in favor of the motion to reject, let me just say before we vote,
7 the Council has in the past added to the ballot several amendments by Mr. Ficker that
8 unanimously Councilmembers opposed as individual politicians and voters. So the point
9 is not that we reject this amendment today because we disagree with it. The point is that
10 we reject this amendment today because it is not in compliance with state law.

11
12 Councilmember Floreen,
13 [INAUDIBLE]

14
15 Council President Leventhal,
16 And could not in fact be applied. So, those in favor of the motion will signify by raising
17 their hands. It is unanimous among those present. Mr. Faden.

18
19 Mike Faden,
20 Two quick points, Mr. President. First of all, I assume it applies to both pending
21 resolutions before you.

22
23 Council President Leventhal,
24 It does.

25
26 Mike Faden,
27 Secondly, I assume you do not want, because of the likelihood this could go to court I
28 assume you don't want the Board of Elections to stop counting the signatures.

29
30 Council President Leventhal,
31 I have no objection to the Board of Elections continuing to count signatures.

32
33 Mike Faden,
34 Okay.

35
36 Council President Leventhal,
37 Okay. The next item before us is simple resolution to establish a precedent...

38
39 Marc Hansen,
40 I'm sorry, there's just one other issue I think, Mike, and that is that since this is the
41 decision of the governing body I think something in writing would need to go to the
42 County executive for the County Executive's signature.

43
44 Unidentified Speaker,



August 15, 2006

1 [INAUDIBLE]

2
3 Mike Faden,
4 I'm here to stay but I have, this is a new angle which we have not really dealt with. If this
5 element of the governing body has passed nothing, then there's nothing for the...
6

7 Marc Hansen,
8 The other element to pass?
9

10 Mike Faden,
11 Right.
12

13 Marc Hansen,
14 I would go with that.
15

16 Council President Leventhal,
17 That was easy. We're accommodating each other in mid-august. We now turn to a
18 resolution to establish a public hearing for September 19. Moved by Ms. Floreen,
19 seconded by Mr. Subin. This is a public hearing on the Bethesda CBD corrective map
20 amendment number G-856. Those in favor of establishing a public hearing on
21 September 19th will signify by raising their hands. It is unanimous among those present.
22 Enjoy the rest of your summer.